IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 2ND JANUARY 2007 / 12TH POUSHA, 1928

Crl.MC.No. 4125 of 2006()

CC.467/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

.....

PETITIONER: ACCUSED NOS.1 & 2.

---

1. YOOSUF, S/O.KUNJALU,
   AGED 42 YEARS, THOPPIL VEEDU,
   CHERPULASSERY, OTTAPALAM.

2. ABU, S/O.KUNJALU,
   AGED 34 YEARS, THOPPIL VEEDU,
   CHERPULASSERY, OTTAPALAM.

BY ADV. SRI.P.P.THAJUDEEN
SRI.MANSOOR.B.H.

RESPONDENTS: COMPLAINANT.

SUB-INSPECTOR OF POLICE,
SREEKRISHNAPURAM POLICE STATION,
REPRESENTED PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.A. AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 4125 of 2006

- -

Dated this the 2nd day of January, 2007

O R D E R

The petitioners are accused 1 and 3 in a prosecution, inter alia, under Section 324 r/w. 149 I.P.C. The petitioners had entered appearance along with the other three accused (altogether there were five accused persons). After the evidence of the prosecution was closed, the matter was posted for examination of the accused under Section 313 Cr.P.C. At that stage, the petitioners started absconding. The case against them was split up. The case against the co-accused proceeded. By Annex.I the co-accused, who were available for trial (accused 2, 4 and 5), were found not guilty and acquitted. The case against the petitioners is proceeding. Consequent to their non-appearance, coercive steps have been taken by the learned Magistrate.

2. The petitioners have now come before this Court with a prayer that the proceedings against them may also be quashed invoking the powers under Section 482 Cr.P.C. in as much as the co-accused have already been found not guilty and acquitted. It is further prayed that, at any rate, direction may be issued to the learned

Magistrate to release the petitioners on bail when they appear and seek bail. The petitioners apprehend that the learned Magistrate may not consider their applications for bail on merits, in accordance with law and expeditiously.

3. Acquittal of the co-accused is by itself not a reason justifying the prayer for quashing of proceedings by absconding co-accused. This position has been made clear in the decision in **Moosa** v. **S.I. of Police** (2006 (1) KLT 552). There is a significant difference in this case as the prosecution evidence is already adduced and it is on the basis of that prosecution evidence that the co-accused have been found not guilty. But even that, according to me, after going through the judgment of acquittal produced as Annex.I, cannot operate as a sufficient reason to justify the claim of the petitioners for premature termination of the proceedings against them. The evidence against accused 1 and 3 (the petitioners herein) appear to be slightly different from the evidence against the acquitted co-accused. I have not intended to express any opinion on merits about the acceptability of the case against the petitioners. I intend only to express the opinion that the acquittal of the co-accused for the reasons shown in Annex.A1 cannot by itself justify premature termination of the proceedings against the

petitioners. The prayer for quashing the proceedings cannot therefore succeed.

4. The learned counsel for the petitioners prays that there may be a direction that the proceedings against the petitioners need continue only from the stage where they started absconding allegedly. No separate or specific direction appears to be necessary. There is no reason to assume that the learned Magistrate would now choose to unnecessarily conduct a denovo trial against the petitioners. The entire evidence of the prosecution having already been adduced in their presence and they having started to abscond only after the matter was posted for Section 313 examination, no specific direction in this regard appears to be necessary. It is certainly for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not appear before the learned Magistrate when the case was posted for Section 313 examination. The learned Magistrate, needless to say, must consider such cause on merits and pass appropriate orders. I have no reason to assume that the learned Magistrate would not do the same. No special or specific direction appears to be necessary. Sufficient general directions have

already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

3. This Crl.M.C. is accordingly dismissed, but subject to the above observations/directions. I may hasten to observe that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself unless there are compelling reasons.

(R. BASANT)
Judge

tm